

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7362 OF 2003

Parshuram K. Patwardhan Petitioner

versus

Life Insurance Corporation
of India

... Respondents.

Shri D.S.Chandanani for the petitioner
Shri V.Y. Sanglikar for the Respondents.

**CORAM; V.G. PALSHIKAR &
V.R. KINGAONKAR, JJ.**

DATED; 10TH MARCH, 2006.

P.C:

1. By this petition, the petitioner has challenged the action of the respondent LIC in not paying its liability under the contract of insurance. According to the petitioner, the Insurance Corporation is liable to honour the contract and cannot get away from the same on the ground not mentioned in the proposal form.

2. This is therefore a pure case of breach of contract at the highest the Corporation having agreed to pay the stated sum on the happening of a stated event, has failed to do so. The proper remedy is to file civil suit for such relief. However, the petitioner insisted that writ petition is tenable for which reliance was

placed on a judgment of the Supreme Court in Life Insurance Corporation of India and others Vs. Smt. Asha Goel and another reported in **AIR 2001 S.C. page**

549. In this very judgment the Supreme Court has observed as under:

"In a case where claim by an insured or a nominee is repudiated raising a serious dispute and the court find that dispute to be bonafide one which requires oral and documentary evidence for its determination then the appropriate remedy is a civil suit and not a writ petition under Article 226 of the Constitution. Similarly, where a plea of fraud is pleaded by the insurer and on examination is found prima facie to have merit and oral and documentary evidence may become necessary for determination of the issue raised then a writ petition is not an appropriate remedy."

2. In the present case, therefore, the question as to whether the suicide was intentional or otherwise. The question whether the petitioner was alive to the condition of suicide mentioned in the policy, but not mentioning for the proposal are serious dispute. For Investigation of this, cogent evidence will have to be

led to prove that what was contended in the form of proposal. Similarly the question whether under such circumstances of suicide, the corporation could avoid its liability or not is a question of fact which will have to be proved by the Corporation. In such circumstances, serious disputed facts has arisen which requires oral and documentary evidence to be led.

Hence the proper remedy is to file civil suit.

3. Here we would like to mention about the insistance of parties and advocates to maintain the writ petition in all possible case. This petition was filed in the year 2003. The petitioner hails from Sindudurg where the pendency of suit is average 14 to 16 months. In any case within three years such suits are normally decided. But that remedy is avoided and the benefits which can flow to insured persons are unnecessarily protracted, merely because the writ petition is the remedy for everything. Leaving that remedy of civil suit is open to the petitioner, this petition is dismissed with costs of Rs. 500/-.

....